

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROBERT VAN HORN,

Petitioner,

v.

//

CIVIL ACTION NO. 1:09CV150
(Judge Keeley)

WARDEN JAMES CROSS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION AND
DENYING PETITION FOR WRIT OF HABEAS CORPUS

On November 4, 2009, the pro se petitioner Robert Van Horn ("Van Horn"), filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, which the Court then referred to United States Magistrate Judge David J. Joel for initial screening and a report and recommendation ("R&R") in accordance with Local Rule of Prisoner Litigation 83.09. The magistrate judge determined that summary dismissal was not warranted and ordered the respondent, Warden James Cross ("Cross"), to show cause why the petitioner's writ should not be granted. On January 22, 2010, Cross filed a motion to dismiss or, in the alternative, for summary judgment (dkt. no. 21), to which Van Horn responded on February 9, 2010.

On March 1, 2010, the magistrate judge issued an R&R (dkt. no. 26), in which he recommended Cross's motion to dismiss be granted and the petition be denied due to Van Horn's failure to exhaust his administrative remedies. The R&R also specifically warned Van Horn that his failure to object to the recommendation within fourteen

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days of receiving service would result in the waiver of his appellate rights on this issue. Van Horn received service of the R&R on March 3, 2010 but has filed no objections, and the time to do so has expired. Accordingly, the Court **ADOPTS** the R&R in its entirety, **GRANTS** the motion to dismiss (dkt. no. 21), **DENIES** the petition (dkt. no. 1) and **ORDERS** the case **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this order to counsel of record, all appropriate agencies, and the pro se petitioner via certified mail, return receipt requested.

Dated: April 13, 2010

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE